

**WESTCHESTER SUPREME COURT  
MATRIMONIAL PART OPERATIONAL RULES  
Effective September 1, 2022**

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**INTRODUCTION**

By Order of the Hon. Anne E. Minihan, Administrative Judge of the Ninth Judicial District, and the Hon. Norman St. George, Deputy Chief Administrative Judge for the Courts Outside New York City these revised and restated Westchester Supreme Court Matrimonial Part Rules will apply to all pending and new matrimonial actions in Westchester County, effective September 1, 2022.

These operational rules are designed to ensure effective matrimonial case management consistent with the requirements and guidelines set forth in the Civil Practice Laws and Rules and in the Uniform Civil Rules for the Supreme Court (22 NYCRR 202.1 et. seq. and 202.16 et. seq.) It is also the policy of the Part to encourage the use of mediation and alternate dispute resolution where appropriate.

The revisions are designed to move cases more efficiently from commencement to resolution by trial or settlement and to reduce backlogs. The Matrimonial Part Operational Rules should be considered in conjunction with and complementary to the Individual Part Rules of a presiding Justice of the Supreme Court. The current iteration of the Matrimonial Rules provides for increased involvement of the Assigned Justice earlier

in the action, which is beneficial to litigants and counsel and will promote early resolution of issues. The revisions also include expansion of the authority of Court Attorney-Referees, designed to provide additional resources to the assigned Justice. Finally, the revised rules will ensure more efficient motion/Order to Show Cause practice by eliminating the requirement of prior Court approval to file non-emergency applications, while continuing to promote settlement and judicial economy through the adoption of the pre-motion conference rules established by the Uniform Rules for the Trial Courts.

These operational rules have been developed in consultation with Hon. Victor G. Grossman, Supervising Judge of Matrimonial Matters of the Ninth Judicial District, the Justices presiding in the Matrimonial Part, Court Attorney Referees, members of the Matrimonial Bar, and Attorneys for Children.

## **Application**

These rules shall apply to all matrimonial actions and proceedings in the Supreme Court, Westchester County including any applications to enforce or modify any provision of a judgment or order entered in an action for divorce, separation, annulment, declaration of nullity of a void marriage, declaration of validity or nullity of a judgement of divorce rendered against a spouse who was the defendant in any action outside the state of New York and did not appear therein where such spouse asserts the nullity of such foreign judgment, or an injunction restraining the prosecution in any other jurisdiction of an action for a divorce, or in any proceeding pursuant to section two hundred forty-three, two hundred forty-four, two hundred forty-five, or two hundred forty-six of this article, except where expressly indicated otherwise.

### **A. Appearances Before the Court and Court Attorney-Referees**

The Court requires that counsel, parties, and self-represented parties be present, on time and ready to proceed for all scheduled court appearances. Counsel and self-represented parties must be fully familiar with these rules and the facts of the action on which they appear. At all court appearances, counsel must be authorized and prepared to discuss all factual and legal issues presented by the litigation and settlement demands or offers. Unless agreed to by the parties personally in the presence of the assigned Justice or by leave of the Justice, appearances by parties are required at all conferences.

### **B. Pre-Note of Issue Court Conferences**

#### **I. The Preliminary Conference**

1. The assigned Justice shall conduct a Preliminary Conference, which shall be scheduled and conducted in accordance with 22 NYCRR §202.16(f). A Preliminary Conference may not be adjourned for more than fourteen (14) calendar days from

the date for which it is initially scheduled absent a showing of good cause which shall be defined narrowly to include emergencies for a brief further adjournment, of the Preliminary Conference not to exceed ten (10) days, and must be conducted within forty-five (45) days of the filing of the Request for Judicial Intervention absent a showing of good cause which shall be defined narrowly to include emergencies for an extension of the said deadline not to exceed ten (10) days.

2. Prior to the Preliminary Conference, attorneys for the parties shall meet in person whenever practicable or conduct a meaningful phone conference at least ten (10) days prior to the conference to review and complete a proposed Preliminary Conference Order, and resolve, if possible, issues of *pendente lite* relief, final relief, counsel fees, parenting plans and access. Parties must submit the proposed Preliminary Conference Order at least two (2) days prior to the scheduled Conference via New York State Courts Electronic Filing (NYSCEF). The form of Preliminary Conference Order that must be used is attached. Statements of Net Worth and attachments required by 22 NYCRR 202.16 (f)(1)(i-vi) (a) and (b) shall be exchanged between counsel and/or self-represented parties. Counsel and self-represented parties must also file Statements of Net Worth and attachments required by 22 NYCRR 202.16 (f)(1)(i-vi) (a) and (b) no later than ten (10) days prior to the date of the Preliminary Conference. Failure to comply with the provisions of this paragraph may result in the imposition of sanctions, including, but not limited to, an award of counsel fees to the compliant party, the denial of counsel fees to the non-compliant party, the imposition of monetary sanctions or other appropriate sanctions. Counsel are reminded that Statements of Net Worth are subject to a continuing duty to disclose pursuant to CPLR 3101(h).

3. The Justice assigned shall meet personally with counsel and with the parties at the Preliminary Conference. During the Preliminary Conference it shall be determined whether the matter qualifies for the Presumptive Matrimonial Mediation Program procedures, in accordance with the Rules of the Alternative Dispute Resolution Program for the Ninth Judicial District, and the Statement of Procedures of the Presumptive Matrimonial Mediation Program in the Supreme Court, Westchester County, or if the parties voluntarily wish to pursue Alternative Dispute Resolution.

4. At the Preliminary Conference and all subsequent conferences, the Court shall place the parties under oath, and any statements by the parties or answers to questions by the parties may serve as a basis for a temporary order provided that a full stenographic record is made of such proceedings consistent with Judiciary Law § 295.

5. During the Preliminary Conference, the Court shall ascertain whether the granting of a divorce is contested and that all litigants are entitled to a divorce

based on DRL §170(7) unless the alleged grounds occurred within six (6) months of filing. If the parties agree that the granting of a divorce will not be contested, the agreement will be incorporated into the Preliminary Conference Order contained in Appendix "G" to the Uniform Civil Rules for the Supreme and County Court. If a complaint or answer has not been served, the stipulation shall provide that the parties waive and relinquish any right either may otherwise have to discontinue the action as of right pursuant to CPLR Rule 3217(a)(1).

6. At any time following the Preliminary Conference, and prior to trial, the Court upon consent of the parties may refer the matter to the Central Pre-Trial Alternative Dispute Resolution Part for settlement purposes, in accordance with Section 202.29 of the Uniform Civil Rules for the Supreme Court and the County Court.

## **II. Issues relating to unemancipated children of the marriage**

1. If all issues relating to decision-making and/or parenting time have been resolved by the conclusion of the Preliminary Conference, the assigned Justice shall require that the parties submit, within ten (10) days after the date of the Preliminary Conference, a fully executed stipulation addressing decision-making, and residential custody and access. The stipulation must be signed and acknowledged in the form to have deed recorded, and shall be So-Ordered by the Court and filed via NYSCEF.

2. If any issue relating to custody, including parenting time and decision-making remains unresolved at the conclusion of the Preliminary Conference, the Court shall refer the parties to the New York State Unified Court System Parent Education and Awareness Program. The parties will be provided with the list of approved Parent Education and Awareness Program Providers.

3. A party or their counsel may request the appointment of an Attorney for the Children and/or the appointment of a forensic evaluator for issues relating to custody and access at the Preliminary Conference or thereafter. The application may be made orally or in writing, not to exceed three pages and the adversary shall respond within five (5) days. The assigned Justice shall determine the application within ten (10) days of the submission of the request, or at such other time as it appears necessary to the Court.

4. No attorney shall be appointed for a child, nor a child forensic evaluation ordered, except upon Order of the assigned Justice which shall be made: (a) upon notice of motion pursuant to these Rules or (b) as a result of a conference before the assigned Justice. In determining the allocation of payment for an appointed Attorney for the Child or a forensic evaluator the Court shall consider the parties' net worth statements, most recent tax returns, and any other information the Court deems relevant. The order appointing a forensic custody evaluation shall specify the issues to be evaluated. Nothing contained herein shall be deemed to limit or

restrict the authority of the assigned Justice, in accordance with the law, to make any appointment pursuant to Parts 26 and/or 36 of the Rules of the Chief Judge, it being the purpose of this Rule to simplify the process and reduce cost, expense, and burden to the court and to the parties. Such appointments shall be made from the approved list of eligible Attorneys for Children and the Mental Health Professionals Panel.

5. Upon the entry of the parties into a final settlement of all of the issues involving custody and access of the children, the Attorney for the Children shall submit to the Court an application for final approval of compensation within twenty (20) days of the entry of the stipulation reflecting such final settlement, including an affidavit or affirmation describing all services rendered and describing the reasons why the requested compensation should be approved, together with a proposed order approving compensation and the forms required by 22 NYCRR Part 36. Opposition to the application shall be served and filed within ten (10) days of the service of the application. Where issues involving children are to be determined at a trial or hearing, the Attorney for the Children shall submit to the Court an application for final approval of compensation, including an affidavit or affirmation describing all services rendered and the reasons why the requested compensation should be approved, together with a proposed order and the forms required by 22 NYCRR Part 36.1, at such time as is directed by the assigned Justice, but in no event later than twenty (20) days after the entry of a decision or order by the Court determining the issue. Failure to timely submit such applications or to provide an affidavit or affirmation of services may result in the denial of any further compensation in that case or a directive that monies previously received be refunded or may be considered in determining whether the attorney involved should receive further assignments. Opposition to the application shall be served and filed within ten (10) days of the service of the application. Where issues involving children are to be determined at a trial or hearing, copies of all orders approving or authorizing compensation to an Attorney for the Child or children shall be forthwith filed via NYSCEF and Chambers shall file with the Fiduciary Clerk of the Supreme Court, Westchester County, for purposes of assuring compliance with 22 NYCRR Part 36.

6. A report of a court-appointed neutral forensic custody evaluator regarding a child or children is a confidential report to be reviewed by the attorneys for the parties. It shall not be copied or disclosed to any person except as permitted by order of the Court. Any attorney who wishes to receive a copy of the report must first sign and file with the Court an affirmation provided by the Judge's Part Clerk acknowledging the confidentiality of the report and explicitly accepting the restrictions upon reproduction and dissemination of the report specified herein and as more fully set forth in the order of appointment of the neutral forensic custody evaluator. A party (client) may review the report but may not possess a copy of the report. Self-represented litigants may make arrangements directly with the Judge's Part Clerk to review the report at the Courthouse. No device capable of recording or photographing shall be allowed in the room where the *pro se* litigant

is reviewing the report. Persons may take notes. If counsel seeks to retain experts or trial consultant, counsel may apply to the Court for permission to have the expert or consultants receive a copy of the report. The experts or consultants shall sign a confidentiality agreement prior to receipt of the report. In no event is a copy of a report or description of its contents to be disseminated to any person or published or distributed to anyone other than court personnel, and shall not be uploaded onto the NYSCEF system except that counsel may provide a copy of the report to co-counsel provided that co-counsel shall first sign and file with the Court an affirmation that may be obtained from the Judge's Part Clerk acknowledging the confidentiality of the report and explicitly accepting the restrictions upon reproduction and dissemination of the report specified herein and as more fully set forth in the order of appointment of the neutral forensic custody evaluator. Any counsel or party who violates these restrictions is subject to sanctions and/or contempt pursuant to Article 19 of the Judiciary Law.

7. Counsel or self-represented parties may stipulate at a Preliminary or other conference to designate a particular person or firm to conduct a property evaluation and to the allocation of the expense thereof between the parties. If counsel (including any party not represented by counsel) agree upon the evaluation as necessary and as to the allocation of expenses but cannot agree upon a person or firm to conduct the evaluation, they may submit proposed names to the assigned Justice to order the designation. If the parties cannot agree upon the necessity for the evaluation or upon the allocation of responsibility therefor, an application shall be made, on notice to all parties, to the assigned Matrimonial Part Justice who shall determine the application within fifteen (15) days of being fully submitted. In addition, the requesting party shall include: the issues and properties to be valued, the proposed apportionment of responsibility between the parties, including the reasons therefor. Such statement shall be served upon all adverse parties, and any party opposing the application, in whole or in part, shall submit a statement, setting forth which part(s) of the application is opposed and the basis for such opposition within five (5) days of receipt of the application. Nothing contained herein shall be deemed to limit or restrict the authority of the Matrimonial Part Justice, in accordance with the law, to make any appointment, it being the purpose of this rule to simplify the process and reduce cost, expense, and burden to the court and to the parties.

### **III. Pre-note conferences following the Preliminary Conference**

At the conclusion of the Preliminary Conference, the assigned Justice shall set a date for a Compliance Conference before the Court to review the progress of the parties in completing disclosure. The Compliance Conference shall be held at least thirty (30) days prior to the date by which disclosure is to be completed, and within six months of the filing of the Request for Judicial Intervention for the purpose of confirming that all disclosure is complete or will be completed timely. Nothing in this paragraph precludes the Court from conducting periodic status

conferences as needed to assure that disclosure is being completed on a timely basis, except for good cause shown.

1. The assigned Justice shall conduct a Trial Ready Conference within five (5) days of the date set for completion of discovery. At the Trial Ready Conference, the assigned Justice shall confirm that all disclosure has been completed or that sufficient time has been given for such disclosure to have been completed. Any disclosure which was not completed in conformity with the Preliminary Conference Order may be deemed waived or appropriate sanctions imposed against a party who failed to timely provide discovery. The Trial Ready Conference may be continued to another date, but only once and only for a period not to exceed thirty (30) days.

2. Notwithstanding any provision herein to the contrary, all Trial Readiness Conferences must be held, and a trial date set within six (6) months of the filing of the Request for Judicial Intervention. The Trial should be held within ninety (90) days of the Trial Readiness Conference. No exceptions to this provision will be permitted without the approval of the assigned Justice before whom the case is pending.

3. Once a trial date is set, no further disclosure may be had, except upon order of the Court or the consent of both parties.

4. Conferences with the assigned Justice may be requested in a writing, briefly outlining the issues to be considered and setting forth the availability of counsel and their client. A request for a conference shall include a certification pursuant to 22 NYCRR §130-1.1a by the person requesting a conference that he or she personally had a conference with opposing counsel (or party where appropriate) and the Attorney for the Children, if any, or attempted in good faith to have a conference with opposing counsel if any, and made a good faith effort to resolve the issues, which certification shall include the type of conference (in person or phone), the date of such conference, the time the conference began and ended, and the specific issues discussed, of the reasonable attempts made at having such a conference before requesting judicial involvement with the extant issue(s). In the event there are issues that cannot be resolved, any party or the attorney for the Children, if any, may request that the assigned Justice issue a briefing schedule for any motions/Orders to Show Cause that any party may wish to bring with respect to any unresolved issue.

5. At the request of counsel, or on its own motion, the Court may schedule a Settlement Conference with the parties and counsel attending in person.

6. All conferences excepting the Preliminary Conference and Settlement Conferences may be held virtually by electronic means.



7. The Court may impose sanctions on a party who fails to appear for a court conference before a court attorney-referee or Judge, which may include dismissal of the action or entry of a default judgment, or other remedy as provided in 202.16(e)(2).

### **C. Motions**

1. Matrimonial Motion Support Office. In order to expedite the timely disposition of motions, all motions shall be referred to the Motion Support Office for processing and assignment to the Justices assigned to the Matrimonial Part. All motions shall be made returnable in the Matrimonial Motion Support Office.

2. Requests for pre-motion conferences, adjournments, and all other inquiries regarding motions shall be directed to the Matrimonial Motion Support Office. Under no circumstances should any party inquiring about a motion contact Chambers or a Court-Attorney Referee directly.

3. Except as herein provided for pre-note of issue cases, and except in the event of an emergency that requires immediate relief from the assigned Justice or motions addressed to contempt or enforcement of an existing Order, no motions are to be made without the movant first requesting a pre-motion conference. Requests for pre-motion conferences should be filed on NYSCEF and e-mailed to the Matrimonial Motion Support Office, not to exceed two pages. Opposing counsel will be permitted twenty-four hours to file a response to the request, not to exceed two pages. Under no circumstances should any party requesting a pre-motion conference transmit a copy directly to Chambers or to a Court-Attorney Referee. Properly submitted requests for pre-motion conferences shall be addressed by the Court within two business days from a complete submission. Parties are directed to comply with the Uniform Rules for the Trial Courts regarding motion practice, and more specifically Rules 202.16(k) and 202.16-b. Upon the filing of a motion seeking Contempt or enforcement of an existing Order, the assigned Justice may direct a conference with counsel before establishing a briefing schedule.

4. No motion in any matrimonial action, whether pre-judgment or post judgment, may be adjourned without approval from the assigned Judge or Court Attorney Referee. Requests for adjournments should be filed on NYSCEF and e-mailed to the Matrimonial Motion Support Office. Under no circumstances should any party requesting an adjournment transmit the request directly to Chambers or to a Court-Attorney Referee. Absent a showing of good cause, in no event shall the motion be adjourned more than thirty (30) days from the original return date unless a cross-motion is filed and, in that event, the thirty (30) day period shall run from the filing of the cross-motion. At the end of the thirty- day period, the motion shall be deemed fully submitted if not resolved.

5. Sur-Reply and Post Submission Papers: Counsel and self-represented parties are reminded that the CPLR does not provide for the submission of sur-reply papers, however denominated, or the presentation of papers or letters to the Court after the return date of a motion. The Court may permit, in its discretion, sur-replies limited to new matter raised in reply papers or changes in the law after the submission of the application. Requests to submit sur-replies shall be filed on NYSCEF and e-mailed to the Matrimonial Motion Support Office. Under no circumstances should any party requesting leave to submit a sur-reply transmit the request directly to Chambers or to a Court-Attorney Referee. The Court does not permit motion practice by correspondence or e-mail, and such communication will not be considered by the Court.

6. Settled Motions: If the parties settle a motion or part of a motion before the motion return date or before a decision has been rendered, they shall immediately inform the Matrimonial Motion Support Office in writing by email.

7. If an application for relief is brought in the Family Court, in a circumstance in which a prior matrimonial action has been pending and process served, the parties shall promptly notify the Matrimonial Motion Support Office. The assigned Justice shall hold a conference within two (2) court days of notification to review whether the Family Court proceeding should be removed to the Supreme Court. Nothing contained herein shall be construed as limiting or restricting the right of any party to seek relief in the Family Court. The purpose of this provision is to coordinate whether, if a proceeding is brought in Family Court, the proceeding should continue there or, on application, be removed to Supreme Court in the interests of judicial economy and in the interests of the parties and any children of the parties. As a general proposition, if a matrimonial action is pending at the time that Family Court jurisdiction is first invoked, all Family Court proceedings involving the parties will be administratively removed and assigned to the Supreme Court. Conversely, if Family Court proceedings are pending for a substantial period prior to the commencement of a matrimonial action in Supreme Court, the Supreme Court action may be stayed or bifurcated allowing for financial matters and discovery to move forward pending the determination of the Family Court proceedings.

Any order transferring a Family Court proceeding to the Supreme Court, in whole or in part, shall include the Family Court Docket Number(s) and the Family Unit Number. Any Family Court Order of Protection transferred on consent or by Motion/Order to Show Cause in the absence of consent shall be superseded by a Supreme Court Order of Protection with the same terms and conditions unless modified by Stipulation of the parties and approved by the Court. Such Order transferring the Family Court proceeding may be by motion or Stipulation between the parties and approved by the Court.

8. All motions shall be decided within sixty (60) days of the submission of the papers in opposition or reply, whichever is later, or, if no such papers are

submitted, within sixty (60) days of the return date, except if the motion is for *pendente lite* relief, the motion shall be decided within thirty (30) days of the submission of the papers in opposition or reply, whichever is later, or, if no such papers are submitted, within thirty (30) days of the return date. Pendente lite maintenance and child support awards shall be retroactive to the date that motion was made.

#### **D. Post-Judgment Matters:**

1. Any Order to Show Cause or proposed Domestic Relations Order/Qualified Domestic Relations Order filed within six months of entry of Judgment shall be assigned to the Justice who presided and signed the Judgment provided the Justice is still assigned to the Matrimonial Part or is otherwise available. All other post-judgment Orders to Show Cause will be randomly assigned to a Matrimonial Part Justice.
2. When the Assigned Justice signs a post-judgment Order to Show Cause, the matter shall immediately be set down on the Post-Judgment Reference Calendar, during which the matter will be randomly assigned to a Court Attorney-Referee to Hear and Report to the Assigned Justice or to Hear and Determine pursuant to CPLR §4301, Rule 4311 and Rule 4312(2).

#### **E. Settlements:**

1. Cases which are being discontinued through a Notice or Stipulation of Discontinuance will be marked disposed when a filed-stamped copy of the Notice or Stipulation is filed with the Part Clerk of the Assigned Matrimonial Justice. Cases which are settled will not be marked settled or disposed unless and until a Judgment of Divorce (or other appropriate marital relief) is signed and entered. All case management time limits remain in full force and effect unless and until a fully executed copy of a Stipulation of Settlement or Separation Agreement is filed with the Part Clerk of the Assigned Matrimonial Justice by the party who filed the initial Request for Judicial Intervention.
2. Upon the filing of such Stipulation of Settlement or Separation Agreement, the Court will give counsel a date certain for the submission of the required papers for the entry of judgment. If counsel fail to timely submit the papers, sanctions may be imposed, or the action may be dismissed.

#### **F. Note of Issue Procedures**

1. Plaintiff shall serve and file a Note of Issue and Certificate of Readiness on or before the date set in the Preliminary Conference Order unless extended by the Court but not later than ten (10) days of the date of the Trial Ready Conference. A

file stamped copy shall be submitted to the Part Clerk for the assigned Matrimonial Part Justice within two (2) business days of filing. If the Plaintiff fails to do so, the Court shall require the parties and counsel to appear on a date certain. If counsel fails to appear as directed, the Court may dismiss the action, strike the pleadings or impose appropriate sanctions, including the granting of counsel fees to the compliant party or the withholding of counsel fees from the non-compliant party. If a party shall fail to serve the Note of Issue as directed, the court may impose appropriate sanctions, including the granting of counsel fees to the compliant party or the withholding of counsel fees from the non-compliant party.

2. Expert reports must be furnished in accordance with 22 NYCRR § 202.16(g) and shall be admissible in accordance with 22 NYCRR § 202.18. Failure to exchange and file the reports not later than sixty (60) days prior to the trial date (and replies not later than thirty (30) days before the trial date) may, in the Court's discretion, preclude the use of the expert.

## **G. Trials**

1. The provisions of 22 NYCRR § 125.1(g) shall apply with respect to the scheduling and priority of trials and the engagement of counsel. Attorneys designated as trial counsel must appear for trial on the scheduled trial date. If any of such attorneys is actually engaged on trial elsewhere, he or she must produce substitute trial counsel. If neither trial counsel nor substitute trial counsel is ready to try the case on the scheduled date, sanctions may be imposed). Attorneys are cautioned that the rules regarding actual engagement will be strictly enforced

2. No trial may proceed unless a Note of Issue has been filed with the Westchester County Clerk.

3. All matrimonial trials and hearings shall proceed day-to-day until conclusion, where practicable.

4. On the first day scheduled for trial, the trial shall proceed unless either: (a) a file stamped copy of a Notice or Stipulation of Discontinuance is filed with the Part Clerk or via NYSCEF; or (b) a fully executed copy of a Stipulation of Settlement or Separation Agreement is filed with the Part Clerk or via NYSCEF.

5. Upon the filing of such Stipulation of Settlement or Separation Agreement, the Court will provide counsel with a date certain to submit the required papers for the entry of judgment. If counsel fail to timely submit the papers and/or fail to appear, sanctions may be imposed upon counsel and/or the action may be dismissed.

6. In the event that on the trial date, counsel represent that the parties have resolved all of the issues but have not yet entered into a formal agreement, the Justice presiding may, in his or her discretion: (a) require the parties to place their agreement on the record as an oral stipulation of settlement as authorized by CPLR § 2104; (b) grant a limited adjournment for the purpose of allowing the submission of a Stipulation of Settlement or Separation Agreement; or (c) require counsel and the parties to proceed to trial.

**7. One week prior to the commencement of trial**, Unless the Court directs otherwise counsel must submit to the Court the following documents:

- a. Marked pleadings;
- b. Fully executed stipulation of relevant facts. It is expected that even in the most contentious case, there are facts that are not in dispute (*e.g.*, the date of the marriage, the names and birth dates of children, location of real estate, bank and other account balances as of date of marriage, date of commencement, and most recent statement, deferred compensation and pension information, etc.). Failure to stipulate to undisputed facts may increase a counsel fee award payable by the party who failed to stipulate or may decrease a counsel fee award payable to a party who failed to stipulate;
- c. Exhibit lists. Counsel are advised that, absent unusual circumstances, each side may be limited to no more than 15 exhibits, bearing in mind that the need for exhibits (such as tax returns and bank statements) may be reduced, if not eliminated, by stipulations as to undisputed facts (*e.g.*, the amount of the mortgage as of a given date, the amount on deposit in a bank as of a given date). In complex financial cases, counsel is encouraged to utilize the voluminous writing exception to the best evidence rule (*see Ed Guth Realty, Inc. v. Gingold*, 34 NY2d 440, 452, 358 NYS2d 367 [1974]). The rule saves time and counsel fees by creation of a chart outlining the documentary evidence sought to be admitted. The backup documents that verify the content of the chart must be sent to opposing counsel so they can verify the underlying documents and test the accuracy of the chart prior to trial. The proposed exhibit should be exchanged 10 days prior to trial, rather than one week in order to allow time for evaluation.
- d. A list of witnesses, the anticipated order in which they may be called and an estimate of the amount of time that counsel expects that each witness' testimony will take;
- e. A child support worksheet, if applicable;

- f. A maintenance worksheet, if applicable;
  - g. Updated Statements of Net Worth;
  - h. Statements of Proposed Disposition together with any written agreements entered into between the parties relating to financial arrangements, equitable distribution, custody or visitation.
8. In electronically filed actions, counsel are encouraged to file evidence through NYSCEF using the procedures established for the filing of evidence, with appropriate redactions and paginations of multiple pages by “Bates stamp” or similar paginating function.
9. Counsel are advised that, absent unusual circumstances, matrimonial trials are expected to be completed within five (5) full days.
10. The Assigned Justice may, at his or her discretion, with the consent of the Supervising Judge of the Matrimonial Part, by signed Order refer trials limited to financial issues, including maintenance, valuation, equitable distribution, and support, to a Court Attorney-Referee to Hear and Determine upon the consent of the parties pursuant to CPLR 4317(a) or to Hear and Report as otherwise provided pursuant to CPLR § 4301, Rule 4311, Rule 4312(2) and Rule 4317(a).
11. When an Assigned Justice refers a financial trial to a Court Attorney-Referee, the matter will immediately be placed on the Matrimonial Reference Calendar and will be randomly assigned to a Court Attorney-Referee.
12. Where, subsequent to the issuance of the Order of Reference to Determine/Report, the parties agree to have issues of fact or law not specified in the Order of Reference heard and determined/reported by the Court Attorney-Referee, they are reminded to obtain an Amended Order of Reference specifying such additional issues prior to commencing the trial as to any additional such issues.

## **H. DECISIONS AND ORDERS**

1. All hard copy proposed orders or judgments, including counter-orders and judgments, submitted for signature on notice will be ignored unless an Affidavit of Service and Notice of Settlement for a date designated in accordance with Uniform Rule § 202.48 have been included.
2. Proposed orders or judgments must be submitted via NYSCEF unless the parties or counsel do not participate in electronic filing; in such instance hard copy

filing accompanied by an Affidavit of Service and Notice of Settlement for a date designated in accordance with Uniform Rule § 202.48 shall suffice.

3. If the proposed order or judgment resulted from a proceeding on the record, including a bench decision, a copy of the transcript of proceedings shall be provided in support of the proposed order or judgment.

4. Any proposed counter-order or judgment shall be submitted with a copy clearly marked to delineate each proposed change to the order or judgment to which objection is made in accordance with Uniform Rules § 202.48(2). Letters do not constitute counterorders.

5. In non-e-filed actions the parties are responsible to obtain copies of all written orders and decisions. Copies will be mailed only when Chambers are provided with a stamped, self-addressed envelope.

6. Qualified Domestic Relations Orders should be submitted at the time of the submission of the proposed Judgment of Divorce or as soon thereafter as is reasonably practical.

## **I. SETTLED AND DISCONTINUED CASES**

1. Counsel or self-represented parties shall immediately notify the Court of a case disposition. Following the initial notification, counsel shall submit a copy of the stipulation of discontinuance to Chambers, with proof of filing in the Office of the County Clerk, so that the matter may be marked off the calendar.

2. In all settled cases, the Court will provide a date by which the Judgment of Divorce, Findings of Fact and Conclusions of Law, etc. are to be filed. This date is a firm date. Counsel and the parties must appear on this date if the papers have not been timely filed. There is no need for an appearance on the date set by the Court if the papers were timely filed and counsel has given the Court the requisite notice (set forth below) has been given of such filing.

3. After filing the required papers, a letter must be transmitted by fax or email to chambers of the assigned Justice, on notice to all other parties, advising the Court that the papers were filed and the date on which they were filed.

4. If all required papers have NOT been timely filed, all counsel and parties must appear on the appearance date set by the Court. Failure to appear may result in dismissal of the action pursuant to Court Rule 202.27 or such other sanction as the court deems appropriate.

5. Counsel or self-represented parties shall retrieve their exhibits from the Part Clerk within 30 days of signing of Judgment of Divorce or they shall be discarded.

## **J. Rules of Conduct**

1. All attorneys and parties must be present at the time scheduled for a conference or trial. If an attorney or party fails to timely appear, such lateness or failure to appear may be considered in the award of counsel fees and expenses.
2. Unless expressly authorized by the Justice or Court Attorney-Referee to whom it is directed, or unless specifically authorized by these rules, no letter or other written communication is to be transmitted to the assigned Justice or Court Attorney Referee by any means of transmission. Attorneys or self-represented parties shall not copy the Part on any correspondence between them unless there is a specific judicial purpose. All correspondence must bear the full Title and Index Number of the action and the date of the next Court appearance. Correspondence to the Court shall, without exception, be copied to all counsel and to self-represented parties who have appeared in the action and be so reflected in the correspondence. There shall be no replies to any unauthorized submissions and all unauthorized papers shall not be considered, shall be rejected, and shall not be filed in the court records. The Court, in its discretion may except ministerial matters where the rights of a party are not affected.
3. All requests for adjournments shall be in writing, must be addressed to the assigned Justice on notice to all parties including the Attorney for the Children and directed to the Part Clerk. Unless specifically directed to do so, do not copy Chambers nor any Court Attorney-Referee on such correspondence. Any "So-Ordered" or Stipulated adjournment shall be filed in NYSCEF
4. Failure by counsel (or party, where appropriate) to make himself or herself available for a direct conversation with counsel (including a party not represented by counsel) or failure to make a good faith effort to resolve the issues before, during or after any conference may be considered in connection with any application for counsel fees and expenses.
5. Violations of the provisions of these Rules may result in the imposition of appropriate sanctions, including the award of counsel fees and expenses to the non-violating parties or by the denial of counsel fees and expenses to the violating party.
6. Fax/electronic transmissions: Unless specifically approved by the Court, the Court does not accept legal papers of any kind by fax transmission or electronic transmission separate from NYSCEF. Copies of letters requesting or confirming



an adjournment of a motion or conference shall be sent to the Court by fax or electronic mail to the Part Clerk.

#### **K. Compensation for Attorneys for the Child[ren] and Court-Appointed Experts**

1. In any order appointing an Attorney for the Children or appointing an expert, the assigned Justice shall designate the name of the person or firm appointed, shall provide for an initial payment to the appointee, and shall provide for the allocation of financial responsibility as between the parties, subject to reallocation by the Court upon conclusion of the matter.

2. The initial retainer awarded to the Attorney for the Child(ren), or if no retainer was authorized, may be supplemented as set forth herein. Once the retainer is expended, or where no retainer is authorized, the parties shall pay all bills sent by the Attorney for the Child(ren) within twenty (20) days of the date of the bill. All compensation and reimbursement for disbursements billed by the Attorney for the Child(ren) during the pendency of the action shall be approved in the final order of compensation (UCS Form 882) which shall be settled by the Attorney for the Child(ren) on five (5) days' notice, at the conclusion of the Attorney for the Child(ren)'s service in the action or proceeding, or as otherwise directed by the Court and served upon the Fiduciary Clerk. The final order of compensation shall be supported by the Attorney for the Children's Affirmation of Services (UCS Form 881) and served upon the Fiduciary Clerk and the parties. Within ten (10) days of service of a copy of the final order of compensation, the Attorney for the Child(ren) shall return to a party any amount paid by that party in excess of his/her share of compensation and reimbursement for disbursements, as approved by the Court in the final order of compensation. The Attorney for the Child(ren) shall promptly file all forms required by Rule 36.1 of the Rules of the Chief Judge in order to receive prompt payment, and an order awarding final compensation shall not be entered except in compliance with Rule 36.1. Nothing herein shall limit the Attorney for the Children from moving for Judgment after the award of a final order of compensation and an unpaid balance due, or with the approval of the Court. obtaining security for payment.

#### **L. E-Filing Rules and Protocols**

In accordance with § 202.5-b of the Uniform Rules for the New York State Trial Courts, e-filing is authorized in the Matrimonial Part of Westchester County Supreme Court. All e-filing rules pursuant to §202.5-b, apply.

#### **M. Revised Miscellaneous**

All papers which are submitted for signature by the Court shall be identified on the signature page so that the document being signed by the Court can be identified.

Example: Jones v. Jones, Index #      , Type of Document (Judgment of Divorce, etc.)